

Harchakot During Aveilut

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QUESTION: I am currently sitting *shiva* for my mother a”h. I am also currently in *niddah* and my *mikveh* night would be tomorrow night. I know that during *shiva* I’m not allowed to have sex with my husband but I wanted to know if I could go to the *mikveh* so that we can hug and touch, at least in a non-sexual way. I could really use a hug from my husband and his reassuring touch during this time. Would we also be allowed to sleep in the same bed?

ANSWER: Thank you for your question. I am sorry to hear of the loss of your mother. May God give you strength during this difficult time.

I will answer your question in two parts. In a following *teshuva*, I will address using the *mikveh* during *shiva* for a woman who is in *niddah*. For this *teshuva*, we will look at the rules of sexual touch and intimacy during *shiva* for a woman who is **not** in *niddah*.

Sharing a Bed During Shiva

Gemara Moed Katan (15b) states that a person in mourning may not have sex with his or her spouse — אבל אסור בתשמיש המטה. Gemara Ketuvot (4b) addresses the related question of whether other forms of intimacy are also prohibited. The Gemara quotes a *braitta* which states that the Talmudic *harchakot* — distancing measures — that apply when a woman is in *niddah* do not apply during *aveilut*. The *braitta* specifically mentions the practices of a wife pouring (literally, mixing) a cup of wine for her husband, spreading linen on her husband’s bed, and washing her husband’s face, hands and feet. These practices are understood as acts expressing intimacy between husband and wife. Rabbinically, such acts are forbidden when the woman is in *niddah*, either because they may lead to having sexual intercourse or because, regardless of outcome, they are seen as sexual acts themselves.¹ It seems that the *harchakot* were not mandated in the case of *aveilut* because *aveilut* practices are only rabbinic in nature or, at most, a positive Biblical obligation on the first day, and as a rule we do not extend the scope of rabbinic restrictions or create safeguards to protect against their violation.²

The *braitta*’s ruling which is adopted by the Gemara, is that when a wife or husband is sitting *shiva*, these activities are permissible. This is the ruling of Shulkhan Arukh (YD 383:1): אבל אסור בתשמיש המטה, אבל בשאר דבר קורבה מותר, “A mourner is forbidden to have sex but is permitted to act in ways of intimacy, even including mixing his cup of wine, spreading his bed linen, and washing his face, hands and feet, whether it is he or she who is in mourning.”

On the basis of this, *Rishonim* conclude that sharing a bed is also permissible during *shiva* provided that the husband and wife are wearing nightclothes. Their argument is as follows: The Talmud (Shabbat 13a) considers the possibility — which later rejects — that a couple could share a bed together when a woman is in *niddah* but takes for granted that they may not

¹ When it comes to sharing a bed, some *Rishonim* explain that this is prohibited because it will lead to sex (Tosafot Shabbat 13a, s.v. *mah*), whereas other state that it is forbidden because such an act is a sexual in nature and is therefore an inherent problem (Tosafot Sanhedrin 37a, s.v. *HaTorah*). This parallels a debate of Rambam and Ramban regarding sexual touch between a man and a woman who is in *niddah*. For Rambam, such touch is Biblically forbidden and is based on a concern that it will lead to sex: דברים המביאין ליד גילוי ערוה (Laws of Forbidden Sexual Relations, 21:1). For Ramban, on the other hand, the concern is that it is a *chatzi shiur*, i.e., a quasi-sexual act (Critique of Rambam’s Sefer HaMitzvot, *ad. loc.*). Consistent with his position, Ramban explains that the reason husband and wife cannot share a bed when she is in *niddah* even if they are wearing nightclothes is not because they might come to have sex, but because such activities are אסורות לגמרי מטעם הקריבה ואפילו לא יבאו ליד אסורי ביאה “completely forbidden because of the physical contact itself, even if it cannot lead to the transgression of sexual intercourse” (Critique of Sefer HaMitzvot, Negative Mitzvah 353). This might depend on the *harchakot* in question. Many of the *harchakot* are hard to categorize as inherently sexual acts and are best understood as safeguards against the act of sex itself (see SA YD 195:1).

² Although this is not unheard of, see, for example, Tosafot Hullin 104a, s.v. *u’mina*.

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engage in the intimate labors mentioned above. If these practices are permitted during *aveilut*, then, certainly sharing a bed would be permitted. Ra'avad (Ba'alei HaNefesh, Sha'ar Ha'Prisha, 2), Ramban in the name of Tosafot (Torat Ha'Adam, Inyan Aveilut s.v. *tashmish hamitah keitzad*), and Rosh (Ketuvot 1:9) all conclude that a couple may share a bed when one of them is sitting *shiva*.

Rosh, Ramban, and Tosafot (as quoted in Ramban) permit sharing a bed without reservation. This seems to be the position of Rambam as well. Rambam states that sex is prohibited in this case and then adds that a man may be in *yichud*, seclusion, with his wife (Laws of Mourning 5:5). It would be a mistake to conclude from this last phrase that other behaviors are forbidden; *yichud* is singled out because it is not permitted in the unusual case of a bride or groom whose wedding was interrupted by the loss of a parent and they may not be in a room together (see Ketuvot 4a, Rambam Laws of Mourning 11:8; SA YD 342:1). The only act, then, that Rambam forbids is sex itself, consistent with the Gemara which never prohibits anything other than sexual intercourse. Rambam's silence on this matter indicates that everything other than intercourse is permitted.

Ra'avad is more hesitant: מיהו משום לך לך אמרין נזירא סחור סחור לכרמא לא תקרב, מיבעי ליה לארחוקי שלא תישן עמו במטה כלל, "However, in the same way we say to a *nazir*: 'Go around, go around; do not draw near to the vineyard,' so too a man should maintain a distance and not sleep with his wife together in a bed at all [during this time of mourning]." Although permissible as a matter of law, Ra'avad states that they should not share a bed as it could, possibly, lead to sin. The use of the phrase מיהו משום לך — a person should [not share a bed] — as opposed to 'a person must not' or 'one is forbidden,' makes it clear that Ra'avad is not forbidding this as a strict matter of *halakha*.

Shulkhan Arukh rules in accordance with all the *Rishonim* and permits the couple to share a bed, but he ends with the same caveat as Ra'avad: ומיהו משום לך לך אמרין נזירא יש להחמיר שלא ישן במטה כלל, "Nevertheless, because of the principle: 'Go around, go around,' that we say to a *nazir*, one should be strict and not sleep together in a bed at all (i.e., even if wearing nightclothes)."

As a matter of *halakha*, it is permissible when you are in *shiva* for you and your husband to share a bed if you are wearing nightclothes.

What about the Shulkhan Arukh's admonition that "one should be strict" and refrain from this? It is important to restate that this is not a strict *halakhic* requirement, and Ramban, Tosafot, Rosh, and Rambam never mention such a concern. In exigent situations, בשעת הדחק, when one is in need of emotional support, I would rule that one may rely on these major authorities and need not be strict.

I would further argue that even according to Ra'avad and Shulkhan Arukh who advise against sharing a bed, the situation must be evaluated based on the circumstances. There may be times and situations where the possibility of intercourse is effectively non-existent, and in such cases, the couple may share a bed. This is unlike Rabbinic edicts which are not evaluated on a case-by-case basis but which follow strict formal rules — as is evidenced by such phrases as לא פלוג, "we do not make distinctions"; כדי שלא תחלוק, "so as to not make distinctions between the cases,"; and יאמרו כל הסריקין, "shall we then say that all dough-cutters are forbidden and those of Beitos permitted?!". When we are not dealing with a legislated law but rather a concern that a possible problem may arise, context and circumstances play a major role in determining whether the concern is present and operative in a given case.³

³ An example of this is Tosafot's position that one need not practice *mayim achronim*, since its purpose was only to wash away *melach sedomit* which was no longer a concern in his time (Berakhot 53b, s.v. *vi'Hiyittem*; Eiruvim 17b, s.v. *Mayim*; Hullin 105a, s.v. *Mayim*). Similarly, concerns for appearances, *marit ayin*, are heavily dependent on context, see Avoda Zara 12a, Rosh HaShana 24b and Rema Shulkhan Arukh YD 150:3. Tosafot was, at times, prepared to extend this contextual assessment to cases of actual rabbinic legislation which was based on certain real-world concerns that were no longer present. See his comments regarding *mayim megulim*, water left uncovered which was forbidden out of a concern that a snake may have deposited venom into it (Beitzta 6a, s.v. *vi'Ha'idna*), and

There are deep emotional needs that need to be taken into account in the *psak* in this case. If you need this physical closeness for emotional connection and support during this difficult time, then the concern for your emotional well-being would outweigh the concern to be strict beyond what is required as a matter of *halakha*. The words of Shakh in his principles of *hora'ah*, rendering *halakhic* decisions, are particularly appropriate (YD 242, end):

כשם שאסור להתיר את האסור כך אסור לאסור את המותר אפילו בשל עובד כוכבים ואפילו במקום שאין הפסד מפני שעל הרוב יש בו צד הקל במקום אחר מחמת שנאסר והוי חומרא דאתי לידי קולא ואף על פי שלפי הנראה לא יבא מזה צד קולא אסור שאפשר שיתגלגל ויבא קולא עד אחר מאה דברים, לפיכך אם הוצרך לאסור מחמת ספק או מחמת חומרא בזה שאין האיסור ברור כשמש צריך המורה לומר שאין האיסור ברור אלא שאנו מחוייבים להחמיר וכל שכן אם המורה מתיר בשעת הדחק וכיצא בו שיאמר לו כן:

Just as it is forbidden to permit what is forbidden, so it is forbidden to forbid what is permitted, even in matters relating to non-Jews and even in cases where there is no financial loss. In most cases an [undesired] leniency in another area will result from forbidding this thing, and this ruling will be a stringency that brings an [inappropriate] leniency. Even if it appears that no [undesired] leniency will result, it is forbidden [to be strict] because it is possible that there will be a ripple effect and an [inappropriate] leniency will result a hundred steps [away from the original ruling]. Therefore, if it is necessary to be stringent due to some doubt or stringency, *chumra*, in cases where the matter is not outright forbidden, the *posek* must state explicitly that the matter is not obviously forbidden but that we nevertheless have an obligation to be strict. And certainly if the *posek* would be lenient in cases of exigency, he should say so.

Shakh reminds us that stringencies almost always come with a cost. It is thus critical to not be overly strict and to clearly delineate the line between a *chumra* and actual *halakha*. Even when *chumrot* are necessary, they must be identified for what they are. In our case, Shulkhan Arukh not only identified keeping separate beds as a stringency, but was careful to indicate that such practice is not obligatory: he writes that “one should” be strict and not that “one must” be strict. A stringency like this would not be appropriate when it comes at an emotional cost. If the mourner is in need of such closeness and intimacy, it is permitted and appropriate for them to share a bed.⁴

clapping or dancing on Shabbat, which was forbidden lest a person come to fix a musical instrument (Beitzah 30a, *s.v. Tenan*). See also the debate in the *Rishonim* and *poskim* whether *chalav akum*, milk from cows milked by non-Jews, applies when there is no concern that non-kosher ingredients may have been added (Mordechai Avoda Zara 826, Teshuvot Radvaz 4:75), and whether *gevinat akum*, cheese made by non-Jews, remains forbidden when there is no concern that animal rennet was used (Rambam, Forbidden Foods 3:14, Beit Yosef YD 115, *s.v. Gevinot Akum*).

⁴ A perusal of the three most common handbooks on laws of mourning reveals that only one, the Artscroll guide, echoes Shulkhan Arukh’s reservation regarding sharing a bed. Note that even this work does not state this as a matter of *halakha* or as a strict requirement.

“Mourning in Halacha,” Chayim Binyamin Goldberg, p. 216 (Artscroll), “One also should be stringent and refrain from hugging and kissing. One should not sleep in the same bed with his wife (sic.)”

“Jewish Way in Death and Mourning,” Maurice Lamm, p. 133: “However, unlike the prohibition of cohabitation during the menstrual period and the seven days of purification which follow, when husband and wife must remain entirely separated according to Jewish law, the traditions of mourning prohibit only intercourse, but not other forms of intimacy and affection.”

“Gesher HaChayim,” Yechial Michel Tukachinsky, vol. 1, p. 224: האבל אסור בתשמיש המטה, ואינו אסור בהתקרבות כמו: בנדה (טוש"ע שפ"ג) “The mourner is forbidden to have sexual intercourse, but is not restricted regarding other forms of intimacy [which are forbidden] in the case of a woman in *niddah*”

Sexual and Non-Sexual Touch during Shiva

Rishonim are even more permissive when it comes to sexual touch during *shiva*. Ra'avad, who stated that the couple should not share a bed when one of them is in *shiva*, allows them to engage in חיבוק ונישוק - hugging and kissing - and presumably all forms of sexual touch (see Ba'alei HaNefesh, Sha'ar Ha'Prisha, 3, in his hierarchy of degrees of required *harchakot*, where separating from sexual touch is only required in the case of *niddah* and not in the case of mourning).^{5,6}

Poskim explain that Ra'avad is more permissive when it comes to sexual touch than sharing a bed because he sees sexual touch as less likely to lead to intercourse. If we assume that intercourse takes place almost exclusively in the bedroom, then being in bed together is only one step removed from intercourse, whereas sexual touch outside the bedroom is, at least, two steps removed.⁷

Ra'avad's position is adopted by other *Rishonim* and the Shulkhan Arukh. Ramban writes: ולא עוד אלא אפי' בחיבוק, "Even hugging and kissing and the like are permitted. This is what Ra'avad z"l wrote and the sage has issued his ruling" (Torat Ha'Adam, *ibid*). Rosh implicitly endorses Ra'avad's position, citing Ra'avad's rulings on sexual touch and a related matter and disagreeing exclusively on the related matter (Moed Katan 3:36). This is affirmed by Drisha (Tur YD 342, no. 8), Shakh (YD 342, no. 5) and the vast majority of *Achronim* who understand that Rosh agrees with Ra'avad's first ruling that sexual touch is permitted during this time.⁸ As we mentioned above, Rambam (Laws of Mourning 5:5) only forbids sex itself during mourning, and by implication, would permit sexual touch.

Two *Rishonim* raise reservations regarding this. Although Rosh permits sexual touch, he states that the couple should avoid being naked in bed together: ... ויראה דבאבילות מותר לישן עם אשתו במטה הוא בבגדיו והיא בבגדיה. "It would appear that during mourning a man can sleep with his wife in one bed when they are clothed... but to do so naked, one should be strict" (Ketuvot 1:9). This makes a great deal of sense. While the Gemara (Shabbat 13a) raised the possibility that a husband and wife could share a bed when she is in *niddah* provided that they are clothed, it takes for granted that sharing a bed while naked is forbidden. It is fairly clear that sharing a bed while naked may lead to sex as there are no physical signals to remind them that she is in *niddah*, and the physical closeness itself may create too great a temptation. Rosh's position is that even during mourning, where the restrictions are less severe, sharing a bed while naked should not be done because of this risk. It should be noted that even in this case, Rosh does not forbid this outright as a matter of strict *halakha*.

⁵ Ra'avad even permits this during *aveilut* that interrupted a wedding, where special stringencies are in place. Shakh (YD 342, no. 5) questions this but does not dispute Rav'avad's ruling for a standard *aveilut* period. See Shakh (*ibid.*) who rejects the claim that Ra'avad's leniency regarding touch is limited to this unusual case.

⁶ *Achronim* discuss the relationship between Ra'avad's and Ramban's ruling that a couple may engage in sexual touch when one of them is in mourning and their similar ruling that the couple may engage in sexual touch when the wife is expecting her period (sex is forbidden at that time). See Taz, SA YD 184:3; Bach YD 183, s.v. u'Prisha; Shulkhan Arukh HaRav 184, no. 6 and Kuntrus Acharon, no. 1; Teshuvot Chatam Sofer YD 170; Beit Hillel YD 383; and Rav Ovadya Yosef, Taharat HaBayit, pp. 60-66.

⁷ Some *Achronim* have tried to limit Ra'avad's permission of sexual touch to cases when husband and wife are not permitted to be in seclusion together – the special case when a wedding was interrupted by the death of a parent – but this argument does not withstand scrutiny and is almost unanimously rejected by *Achronim*; see Shakh (YD 342, no. 5).

⁸ See, however, Taz YD 184, no. 3, who understands Rosh to be strict regarding hugging and kissing for a person in mourning, but against this see Shulkhan Arukh HaRav, YD 184, Kuntrus Acharon, no. 2.

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Rabbenu Yerucham, a student of Rosh, is even more strict. He states: ראונו להחמיר שאין לו להתיר שום קורבה זולת, “It is appropriate to be strict and not permit any form of intimacy except for pouring his cup, spreading his bed linen, and washing his face, hands and feet, since the Gemara did not explicitly permit anything else [besides these three].” (Toldot Adam v’Chava, *netiv* 28, p. 232, quoted in Beit Yosef, 383, *s.v. vi’katav ha’Ra’avad*). Rabbenu Yerucham prefaces this more stringent position with the phrase “It is appropriate to be strict” suggesting that he is only advising against such behavior but not forbidding it as a matter of *halakha*. As Rav Ovadya Yosef states (Chazon Ovadya, *Aveilut*, vol. 2, p. 177): ובאמת שאף רבינו ירוחם לא הרהיב עוז לחלוק על הראב"ד והרמב"ן אלא כתב "שראונו להחמיר" ולשון זה: “In truth, even Rabbenu Yerucham did not dare to disagree with Ra’avad and Ramban. Rather, he wrote ‘it is appropriate to be strict,’ and this phrase demonstrates that his intent is only to state this as a matter of a mere *chumra*, but not as a matter of *halakha*.”

Rabbenu Yerucham’s position is challenged by Maharshal (in his commentary on Tur, YD 383; quoted in Bach, YD 383, *s.v. vi’katav ha’Ra’avad* and Drisha 383:1). Maharshal states that since it is permitted for a wife to wash her husband’s face when one of them is in mourning, it is obvious that touch, even intimate touch, is permitted. Maharshal concludes that although such washing is intimate, since it is done in the context of performing a task it does not present a serious risk that it will lead to sex. In contrast, חבוק ונשוק שהוא הרגל לדבר תשמיש דאסור, “[Sexual touch such as] hugging and kissing which are a lead-up to sex are forbidden.” Maharshal ends by saying “and it is proper to be strict regarding this.” These comments are significant, both because they endorse the position of Rabbenu Yerucham, and also because they limit the prohibition to sexual touch which may be a precursor to sex and do not extend it to all forms of intimate contact.

[The distinction between supportive, intimate touch and sexual touch is a critical one that is often ignored by many *poskim*. Many *poskim* prohibit a husband to hold his wife’s hand during childbirth. A woman in childbirth is considered *halakhically* a *cholah*, sick person (and at a certain stage even like a *ki’cholah she’yeish bah sakanah*, a sick person whose life is at risk, see SA OH 330:1); we normally allow non-sexual touch between husband and wife when she is in *niddah* if one of them is sick and needs the other’s assistance and no one else is in an equal position to provide such assistance (see Rema, SA YD 195:16). Nevertheless, these *poskim* have argued that the wife’s desire to hold her husband’s hand specifically (and not the nurse’s or doula’s hand) indicates that such touch is not neutral but of a sexual nature and hence forbidden. In my mind, this fails to recognize the difference between intimate, supportive and comforting touch and sexual touch. The former is permitted when necessary for the case of helping a sick person. In the case of childbirth, holding his wife’s hand is a form of emotional support that the husband can uniquely provide to his wife, and it is thus permitted for him to do so. This will be the topic of another *teshuva*.]

Turning to Shulkhan Arukh, we find that he never restricts sexual touch between husband and wife when one of them is in mourning (YD 342:1 and 383:1). Although, as we noted earlier, he advises against sharing a bed (YD 383:1). In Beit Yosef (YD 342, *s.v. vi’katav ha’Ra’avad*), he explicitly states that we rule like Ra’avad and permit sexual touch. Shakh (YD 342, no. 5) and other *Achronim* affirm that Shulkhan Arukh permits sexual touch at this time.⁹

Rema is not as permissive. Following the ruling of R. Yerucham, he states: אבל חבוק ונשוק יש להחמיר, “Regarding hugging and kissing it is appropriate to be stringent,” (YD 383:1). There are times when Rema uses the phrase ויש להחמיר — one should be stringent — to indicate that one should adopt the stringent side in a *halakhic* debate; in those cases Rema is forbidding a certain behavior as a matter of *halakha*. When Rema uses this phrase in requiring a practice *li’halakhah*, it almost always follows a statement recording the two sides of a

⁹ Shakh is inclined to be stricter in the special case of *aveilut* that interrupts a wedding, but that is not relevant for our concerns.

halakhic debate (see, for example, SA OH 33:1; 159:6, 12 and 14; and YD 103:4). This is not the case here. In our case there is no debate but simply a statement of Rabbenu Yerucham's view which itself was framed not as a *halakhic* requirement but as a stringency. Recall as well that sexual touch was treated consistently as less problematic than sharing a bed, and that even the latter was only ill-advised and not forbidden as a matter of *halakha*.

The consensus of the *Achronim* is that Rema never forbids sexual touch on strictly *halakhic* grounds. In the words of Shulkhan Arukh HaRav (YD 184, Kuntrus Acharon, no. 1), Rema's statement that it is inappropriate to engage in hugging and kissing is **משום לך לך ולא מדינא**, "Because of 'Go around, go around [that we say to the nazir],' and not as a matter of *halakha*" (see also Rav Ovadya Yosef, *Taharat HaBayit*, pp. 60-66 and Chazon Ovadya, *Aveilut*, vol. 2, p. 177).¹⁰

In terms of actual practice, I would rule, following Maharshal, that it is fully permitted for a couple in mourning to touch in an intimate, supporting, and loving manner. Such touch is not in the category of sexual touch, as discussed above. Also following Rema and Maharshal, I would advise restraint when it comes to sexual touch, particularly touch that could be a precursor to intercourse. It seems to me that, in contrast to sharing a bed, there is often less need for sexual touch at this time as a form of comfort and support. If the couple says that sexual touch is a vital part of providing emotional support, then the mourner's emotional well-being should be weighed against Rema's advocating a stringency that is not required as a matter of *halakha*. In such cases, I would advise that such activity be done only outside of the bedroom and in general, the couple should use their best judgment not to engage in any activity that could move them toward having sex. I would also follow Rosh and rule that while the couple can sleep together and hold each other in bed, they should not sleep together naked during this period.¹¹

IN CONCLUSION: When a husband or wife is in mourning, the couple is forbidden to have sex. When the woman is not in *niddah*, as a matter of *halakha*, they may share a bed if they are clothed and they may engage in sexual touch. As a matter of proper cautionary behavior, they should not share a bed and not engage in sexual touch. There is no restriction on comforting, intimate touch — this is totally permissible and advisable at this time. When the mourner is in need of emotional support, they may, and at times should, share a bed. In cases where it is deemed necessary in order to provide that support, they may engage in sexual touch but should take care to do so outside of the bedroom and in a way that is not likely to lead to sex. They also should not sleep together naked at this time.

¹⁰ *Achronim* give various reasons why Rema voices more hesitation here than he does in the case of sexual touch when the woman is expecting her period, SA YD 184:2. See *Achronim* cited above, note 6.

¹¹ It is interesting to note that in the most popular handbook on laws of mourning, two out of three — *Gesher HaChayim* and *Jewish Way in Death and Mourning* — permit all forms of sexual and intimate touch outside of intercourse, without any reservations. See above, note 4.